

## ADMINISTRATIVE POLICY



### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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| <b>TITLE:</b>   | <b>MINIMUM HOURLY WAGE</b> | <b>NUMBER:</b>   | <b>ES.A.3</b>   |
| <b>CHAPTER:</b> | <b>RCW 49.46.020</b>       | <b>REPLACES:</b> | <b>ES-008</b>   |
|                 | <b>WAC 296-126</b>         |                  |                 |
|                 | <b>WAC 296-125</b>         | <b>ISSUED:</b>   | <b>1/2/2002</b> |
|                 | <b>WAC 296-131</b>         |                  |                 |

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#### ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

### Minimum Wage Adjustments

The Minimum Wage Act provides that on September 30, 2000 and on each following year on September 30<sup>th</sup>, the Department of Labor and Industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate will be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1<sup>st</sup> as calculated by the United States Department of Labor. Each adjusted minimum wage rate takes effect on the following 1<sup>st</sup> of January.

Each minimum wage adjustment will be published in the Washington State Register.

### Minimum Hourly Wage—Adults

Employers must pay each employee who is age 18 or older at least the minimum hourly wage established under RCW 49.46.020. This includes agricultural workers, except as provided in RCW 49.46.010(5)(a).

## **Minimum Hourly Wage—Minors**

The department has the authority to set the minimum wage rate for minors by regulation, and did so in WAC 296-125-043, WAC 296-126-020, and WAC 296-131-117, which state that the minimum wage for minors 16- and 17-years of age is equal to that of adults, and the minimum wage for minors under 16 years of age is 85 percent of the applicable adult minimum wage.

## **Minimum Hourly Wage—Agricultural Labor**

Agricultural workers, including minors, are covered under the state minimum wage provisions, except the minimum wage requirement doesn't apply to hand harvest laborers paid piece rate, *and* who commute daily from their permanent residence to the farm *and* who are employed fewer than thirteen weeks in agriculture in the preceding calendar year. See RCW 49.46.010(5)(a).

An example of workers within this group might include berry pickers who reside permanently in the area and work only in the berry crop.

The employer has the burden of proving that workers fall within the above exemption.

## **Determining whether an employee has been paid the minimum wage**

In order to determine whether an employee has been paid the statutory minimum hourly wage when the employee is compensated on other than an hourly basis, the following standards should be used:

- If the pay period is weekly, the employee's total weekly earnings are divided by the total weekly hours worked (including hours over 40). Earnings must equal minimum wage for each hour worked. If such earnings do not equal minimum wage, the employer must pay the difference.
- If the regular pay period is not weekly, the employee's total earnings in the pay period are divided by the total number of hours worked in that pay period. The result is the employee's hourly rate of pay. Earnings must equal minimum wage for each hour worked. If such earnings do not equal minimum wage, the employer must pay the difference.
- For employees paid on commission or piecework basis, wholly or in part, other than those employed in bona fide outside sales positions, the commission or piecework earnings earned in each workweek are credited toward the total wage for the pay period. The total wage for that period is determined by dividing the total earnings by the total hours worked; the result must be at least the applicable minimum wage for each hour worked. See WAC 296-126-021.

- Meal periods are considered hours worked if the employee is required to remain on duty or on the employer's premises at the employer's direction subject to call. In such cases, the meal period counts toward total number of hours worked and must be included in the minimum wage determination.
- "Total earnings" is meant to include all compensation received for hours worked in the pay period, as well as any additional payments, i.e., split-shift bonus or stand-by pay.
- **See ES.A.8.1 and ES.A.8.2** for overtime calculations for payment of other than a single hourly rate.

**Payments not Included in minimum wage determination:**

- Vacation pay or holiday pay is not considered when computing the minimum wage.
- Gratuities, tips, or service fees are not considered when computing the minimum wage and may not be credited as part the minimum wage. See WAC 296-126-022.